



Step 1
State Case # _____
Union Case # CEA-083019

**STATE OF ALASKA
GRIEVANCE FORM**
(Attach copies of previous step forms)
BARGAINING UNIT CEA
CONTRACT YEAR (S) 2019-2022

1. Name of Grievant All Confidential Unit Members 2. Employee ID # N/A
3. Mailing Address 211 4th Street, Suite 306, Juneau, AK 99801
4. Job Class All Job Classes in CEA 5. Location All Locations
6. Department/Division/Vessel/Crew All Departments
7. Discussed with supervisor on June 7, 2019
8. Does grievance stem from contract violation? Yes

If so, what provision(s) 1.1, 1.2, 1.3, 2.1, 3.3, 4, 20, 21.6, and all others that apply.

9. Nature of Grievance

Please see attached.

When did this occur? Continuing

10. Relief Sought

Please see attached.

August 30, 2019

Date

[Signature]
Authorized Submitter Signature (refer to contract)

11. Name and Title of Respondent _____

12. Date Received _____ 13. Remarks _____

14. Decision _____

Date

Respondent Signature

Distribution: Original – Labor Relations, Copies – Union, Payroll/HR Office, Employee
Revised 6/1/09

Alaska Public Employees Association/AFT (AFL-CIO)

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August 30, 2019

Via Email to governor@alaska.gov

Governor Michael J. Dunleavy

Office of the Governor

P.O. Box 110001

Juneau, Alaska 99811-0001

Subject: Step I Class Action Grievance Regarding the Office of Oversight and Review
Union Grievance No. CEA-083019

Dear Governor Dunleavy,

The Confidential Employees Association (hereinafter "the Association") respectfully submits this Step I Class Action Grievance to you as "the first (1st) level supervisor having jurisdiction over all grievants" pursuant to Article 12.2(C). The Class is comprised of all employees in the Confidential Unit.

The State violated numerous articles of the Collective Bargaining Agreement (CBA) when Department of Administration Commissioner Kelly Tshibaka established the Office of Oversight and Review (hereinafter "O&R") and staffed it with employees outside of the Confidential Unit. The State continues to violate the CBA with its continued operation of O&R.

Commissioner Tshibaka announced the creation of O&R within the Division of Risk Management via email on May 8th, 2019. Below is an excerpt from that email.

"I'm also excited to announce that, effective May 16, Thomas Millar will be transitioning from the Acting Director of SSoA to serve as an Investigator in the newly developed Oversight and Review Unit (O&R) within the Division of Risk Management. O&R provides a central point for coordination of, and responsibility for, activities that promote accountability, integrity, and efficiency in State government. O&R also conducts and coordinates reviews and investigations designed to detect, deter, and prevent fraud, waste, mismanagement, misconduct, and other abuses in government. Thomas's background in law and law enforcement, as well as his knowledge and experience in State government, uniquely qualify him for this position [emphasis added]."

The website for O&R includes a list of duties similar to that contained in Commissioner Tshibaka's email. It also names two employees: Lead Investigator John Lehe and Investigator Thomas Millar. Lehe and Millar are both employees in the Totally Exempt Service according to the Alaska State Employee Directory. Their positions are not allocated to the Confidential Unit.

The duties assigned to O&R employees are clearly personnel functions. In Article 1.1, the State agreed that the Association is the exclusive representative of all permanent, nonpermanent, probationary, and provisional employees engaged in the performance of such duties. Therefore, the State violated Article 1.1 when it failed to

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allocate the positions occupied by Lehe and Millar to the Confidential Unit. Because Lehe's and Millar's positions contractually belong within the Confidential Unit, the State violated numerous other articles in its dealings with them.

Surely, the State engaged in employment negotiations with Lehe and Millar. The State thus violated Article 1.2. The State should have directed them to submit requests related to their terms and conditions of employment to the Association.

Lehe and Millar are nonpermanent employees. The only manner in which they could legally have been appointed was under AS 39.25.110(9). This makes them "temporary" employees – "temporary" being synonymous with "nonpermanent." Therefore, the State is violating Article 1.3, which prescribes terms and conditions of employment for nonpermanent employees in the Confidential Unit.

Article 2.1 prohibits the State from discouraging membership in the Association. On information and belief, the State is currently, and has been since the time of their hire, discouraging Lehe's and Millar's membership in the Association. This amounts to interference.

The State is in violation of Article 3.3, which requires the State to submit to the Association certain information regarding the employment of Confidential Unit members. To date, the Association has received no such information regarding Lehe and Millar.

In Article 4, the parties agreed that the State retains the right, except as otherwise provided in the CBA, to manage its affairs and direct its workforce. Article 4 does not, however, give the State the right to abuse its management rights, which is precisely what it is doing by assigning personnel duties to employees outside of the Confidential Unit.

The State violated Article 20 when it hired Lehe and Millar into their positions without recruitment through Workplace Alaska. This failure deprived qualified members of the Confidential Unit of their contractually guaranteed opportunities to interview for O&R positions.

Article 21.6 sets procedures the State must follow prior to contracting out the work of the Confidential Unit. The State failed to follow these procedures prior to engaging in contracts with Lehe and Millar in which they perform personnel duties.

As a remedy, the Association respectfully requests immediate allocation of O&R positions to the Confidential Unit.

The Association maintains its right to cite additional CBA violations, raise additional arguments, and request additional remedies at subsequent steps of the grievance process as further information becomes available. Currently, we are not in possession of sufficient information to determine which other articles of the CBA the State may have violated. The State failed to respond to the Association's request for information pertaining to O&R, which we submitted to the Division of Personnel & Labor Relations on May 31, 2019.

The Association also wishes to point out that the State violated AS 39.25.110(9). As stated above, this is the authority under which the State hired Lehe and Millar, and it only provides for *temporary* appointments. Nothing in Commissioner Tshibaka's announcement or on the O&R website indicated that these appointments were intended to be temporary. Rather, the clear indication was that they were intended as permanent appointments. This is a blatant abuse of the State's authority to make temporary appointments to the Totally Exempt Service.

Furthermore, the State's failure to allocate these positions to the Confidential Unit constituted a violation of the Alaska Public Employment Relations Act (AS 23.40.070 – 23.40.260). Therefore, the Association also intends to file a Unit Clarification Petition and an Unfair Labor Practice charge with the Alaska Labor Relations Agency.

The Association hereby requests the following information:

- Position control Numbers and Position Descriptions, including any classification analyses, for all positions in O&R.
- The dates of hire for all employees in O&R.
- The method of recruitment for each employee in O&R.
- The wages/salaries of all employees in O&R and a detailed breakdown of their benefits. If O&R employees have a salary range and step, please provide them.
- A description of the qualifications of each O&R employee.
- Dates of employment of each O&R employee in prior State positions and the reasons they left these prior State positions.
- The reason(s) the State decided to establish O&R.
- The reason(s) the State decided to establish O&R rather than assign its duties to employees in the Confidential Unit.
- A list of all State employees involved in the creation of O&R, and copies of all correspondence, including but not limited to emails, to or from these employee(s) regarding the creation of O&R.
- All correspondence, including but not limited to emails, related to the hires of O&R employees.
- All correspondence, including but not limited to emails, regarding employment negotiations with prospective O&R employees.
- All documents related to the creation of positions in O&R or the transfer of positions from other work units to O&R.
- Descriptions of all investigations and reviews conducted by O&R to date.
- You established Statewide Human Resources Consolidation in Administrative Order No. 305. Since the duties performed by O&R are obviously human resources duties, will O&R be included in the consolidation? If not, please explain.

In responding to this information request, please know that the confidentiality provisions of AS 39.25.080 do not apply to totally exempt employees.

The Association appreciates your attention to this matter and your prompt response to the request for information above.

Sincerely,



Joel Hill
Field Representative

cc: All Confidential Unit Employees
Commissioner Kelly Tshibaka
Director Kate Sheehan
Director Scott Jordan
Labor Relations Unit